

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

30564

FILE: B-217412

DATE: March 1, 1985

MATTER OF: R & R Contracting, Incorporated

DIGEST:

Low bidder alleging mistake in bid price in response to verification request by contracting officer is entitled to correction where clear and convincing evidence is submitted of mistake, manner in which mistake was made, and the intended bid price, and the intended bid would remain low in any event.

The United States Department of Agriculture requests an advance decision concerning the allegation by R & R Contracting, Incorporated (R & R) of Talmoon, Minnesota, that it made a mistake in its bid on a construction project for the Forest Service. We find that R & R's bid may be corrected and accepted consistent with the following decision.

The Forest Service reports that its solicitation No. R9-84-91 invited bids for the construction of two items of roadway, the Pay-She-Cuming Road project and the Welsh Lake Road project, within the Chippewa National Forest, Cass County, Minnesota. R & R submitted the lowest bid of six bidders at \$266,127.75. Since R & R's bid was 14 percent below the government's estimate and 24 percent below the next lowest bidder, the contracting officer verbally requested R & R to verify its bid. R & R responded that it had erred in the unit price bid for work item number 305(01), "Placing Aggregate," for each of the roadway projects, and requested correction of its bid from \$2.05 to \$2.26 per ton. The Forest Service reports that based on estimated project quantities for each of the roadway projects, R & R's desired correction would result in an \$8,785.35 increase in its total bid price.

R & R explains that it originally prepared its bid by establishing a price for loose cubic yards on each of the roadway projects figured at \$3 per yard in response to item number 305(01). Just before mailing its bid, R & R

031347

states it received amendment No. 1 to the solicitation which changed the bidding unit on work item number 305(01) for both projects from cubic yards to tons. R & R reports that it hastily divided its total dollar bid on item 305(01) of \$49,500 for the Pay-She-Cuming Road project by the 25,660-ton estimate established by the amendment for that project, without making the necessary conversion from cubic yards to tons. The resulting figure of \$1.93, when increased by a figure of \$0.05 for a scale and \$0.07 for a dumpman, totaled \$2.05 per ton. R & R then applied the \$2.05-per-ton figure in calculating its bid on item 305(1) for the Welsh Lake Road project. R & R states that its error resulted directly from its failure to use its customary 1.4 conversion factor to convert cubic yards of aggregate to tons. R & R points out that a 1.4 conversion factor is used by the state of Minnesota and generally throughout that state for converting cubic yards to tons. Thus, R & R requested a correction based on \$3 per yard divided by the 1.4 factor for converting yards to tons for a figure of \$2.14 per ton, which, when increased by \$0.05 for a scale and \$0.07 for a dumpman, totaled \$2.26 per ton. Based on estimated project quantities of 25,660 tons for the Pay-She-Cuming Road project and 16,175 tons for the Welsh Lake Road project, correction would result in an \$8,785.36 increase in R & R's total bid price.

Neither the Department of Agriculture's Office of Operations nor the Forest Service contracting officer believes that the allegation of error has been supported by clear and convincing evidence, so as to allow either correction or withdrawal of R & R's bid. The contracting officer found that, while the worksheets indicated a conversion for bid purposes on work item number 305(01) from cubic yards to tons, the intended change in bid price is neither clear nor convincing. In any event, the contracting officer recommended that R & R's requests for correction or withdrawal be denied because the mistake alleged is judgmental rather than mathematical.^{1/}

^{1/} Concerning our review of mistake in bid cases generally and the evidentiary distinctions between correction and withdrawal of bid cases see Murphy Brothers, Inc., - Reconsideration, 58 Comp. Gen. 185(1978), 78-2 C.P.D. ¶ 440.

In C. T. Lighting, Inc., B-214462, July 24, 1984, 84-2 C.P.D. ¶ 102, we set out the requirements for correcting a mistake in bid after bid opening but prior to award by stating that to permit correction of an alleged error in bid price, the bidder must submit clear and convincing evidence showing that a mistake was made, the manner in which the mistake occurred, and the intended price. See also A & J Construction Co., Inc., B-213495, Apr. 18, 1984, 84-1 C.P.D. ¶ 443. Federal Acquisition Regulation, 48 C.F.R. § 14.406 (1984).

Our Office has also recognized that, in limited circumstances, correction may be proper even though the intended bid cannot be determined exactly, provided there is clear and convincing evidence that the intended bid would remain low in any event. See, for example, Western States Construction Company, Inc., B-191209, Aug. 29, 1978, 78-2 C.P.D. ¶ 149. In Crimson Enterprises, Inc., B-213239, May 8, 1984, 84-1 C.P.D. ¶ 513, we indicated that the sufficiency of the evidence of the bid actually intended should be determined by reviewing the closeness of the corrected bid and the next low bid, and the range of uncertainty, if any, in the intended bid. We also indicated that the closer an asserted intended bid is to the next low bid, the more difficult it is to establish that it was the bid actually intended. Correction may be disallowed when a corrected bid would come too close to the next low bid. See also Broken Lance Enterprises, Inc., 56 Comp. Gen. 1 (1976), 76-2 C.P.D. ¶ 314.

The Forest Service has found nothing unreasonable in R & R's allegation of mistake in response to the request for verification of its bid. Nor does the Forest Service dispute the factual account and worksheets offered by R & R to support that it made a mistake and the manner in which that mistake was made. What does concern the Forest Service is whether R & R actually intended to bid the additional amount represented by the mistake in the bid and whether the worksheets submitted by R & R provide sufficient evidence of the actual bid intended by R & R.

We have examined the specifications along with R & R's worksheets emphasizing the item of work in question. The worksheets, which appear in good order, show a conversion factor of 1.4 for converting from cubic yards to tons, but show no evidence that the conversion factor was actually

used to recalculate prices for item 305(01) as amended. Moreover, the contracting officer concedes that a 1.4 conversion factor is a generally accepted conversion factor that is used throughout the state of Minnesota--the location of the required road work--even though the Forest Service used a 1.56 factor for this particular contract. In addition, R & R has provided a credible explanation of the circumstances which led to its computational error and the omission of its customary formula for converting cubic yards of aggregate to tons. We find that the worksheets, coupled with R & R's explanation, provide clear and convincing evidence of the fact that R & R did in fact make a mistake by failing to convert from cubic yards to tons in its original bid, of the manner in which that mistake was made, and of the intended bid prices. From the record, it appears that R & R made a rather elementary computational error in converting from cubic yards to tons, and we find that the intended bid prices can be calculated in the manner suggested by R & R. See Schoutten Construction Company, B-215663, Sept. 18, 1984, 84-2 C.P.D. ¶ 318.

Finally, we note that R & R's bid of \$266,127.75 was approximately 24 percent below the next lowest bid of \$349,480. Thus, R & R's \$8,785.35 correction will bring its total bid price to \$274,913.10, which will still leave R & R's bid 21.5 percent below the next lowest bid. As a result, not only is R & R's intended bid ascertainable and, therefore, correctable from the worksheets and analysis in this case, but, also, the percentage difference remaining between R & R's corrected bid and the next lowest bid is hardly the type of questionably close upward correction scrutinized and rejected in our decision in Aleutian Constructors, B-215111, July 12, 1984, 84-2 C.P.D. ¶ 44. See Fortec Constructors, B-189949, Nov. 15, 1977, 77-2 C.P.D. ¶ 372.

Accordingly, R & R's bid may be corrected and accepted consistent with this decision.

for Seymour Egan
Harry R. Van Cleve
General Counsel